**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**INCOME TAX REFERENCE No. 120 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**COMMISSIONER OF INCOME-TAX - Applicant(s)**
**Versus**
**M/S.GUJARAT STATE CO-OP.MARKE-TING FEDERATION LTD. - Respondent(s)**

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**Appearance :**
MRS MONA M BHATT for Applicant(s) : 1,
None for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**and**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/08/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. At the instance of the Revenue, Income-tax Appellate Tribunal, Ahmedabad Bench “B” in the matter of Income-tax Appeal No. 1290/Ahd/1992 relating to assessment year 1990-91 has referred the following question for the opinion of this Court.

> “Whether, the Appellate Tribunal is right in law and in facts in confirming the order passed by the CIT[A] deleting additional income-tax of Rs. 22,42,320/- leviable under section 143[1A] of the Act on the ground that there is loss, additional tax cannot be imposed?”

2. The short facts for disposal of the present Reference are that, the assessee filed return for the current year 1990-91 on 23.10.90 declaring loss of Rs. 22,92,36,633/-, the return was processed under Section 143[1][a] and as per the adjustment explanatory sheet, the total income was computed at Rs. 3,58,822/- and additional tax was calculated on prima facie

additions of Rs. 2,63,24,652/-. The assessee claimed deduction under Section 80P for Rs. 2,58,21,400/- on account of the profits from members. The assessing officer made certain adjustments and observed that the net income for tax would be Rs. 2,59,62,784/- and the assessee would be liable to pay additional tax at the rate of 20%. The matter ultimately went to the Tribunal, which, after placing its reliance on the judgment of Delhi High Court in the case of Modi Cement Vs. Union of India {100 CTR 48 [193 ITR 91]}, held that the assessee was entitled to the deductions and the additional income-tax could not be levied.

3. The Supreme Court heard the said matter along with the appeal filed by the **Assistant Commissioner of Income-tax against J.K. Synthetics Ltd., reported in 251 ITR 200.** The Supreme Court has observed that Section 143[1][a] provided certain benefit, but after sub-section [1A] was amended by the Finance Act, 1993 with effect from 1st April, 1989, which was the date upon which sub-section [1A] has been

introduced into the Act, it would be clear from the substituted sub-section [1A] that even where loss declared by an assessee had been reduced by reason of adjustments made under sub-section [1] [a], the provisions of sub-section [1A] would apply. The Court further observed that it being a retrospective amendment, they could cover the controversy in the appeal and, therefore, the appeal had to be decided in favour of the Revenue.

4. The judgment in the matter of Modi Cement, on which the Tribunal had placed its reliance had been overruled by the larger Bench of the Supreme Court.

5. In view of the judgment of the Supreme Court in the matter of Assistant Commissioner of Income-tax Vs. J.K. Synthetics Ltd. [supra], the order passed by the Tribunal is set aside and the Reference is decided in favour of the Revenue and against the assessee. The Reference stands disposed of. No costs.

**[R.S. GARG, J.]**

**[M.R. SHAH, J.]**

**pirzada/-**